
KNOW YOUR RIGHTS IN THE SCHOOL DISCIPLINARY PROCESS



When can a student be suspended?

- Your child can be suspended for violations of the school district's Code of Conduct. A school may issue a warning, require an in school suspension, keep a student out of school for a period of time or expel a student, depending on the circumstances.
- **The school cannot remove your child from his or her classroom, place your child on a partial-day schedule, or make your child stay at home from school unless the school follows the procedures outlined in the New York State Education Law and Regulations, as well as the school's own code of conduct.**

Short-term Suspensions: (five school days or shorter)

The principal can suspend your child for five days or less for behaviors that are in violation of the code of conduct (sometimes called a principal's suspension).

Three Major Rights When Facing a Principal's Suspension

1. The right to **Notice** or an explanation of the suspension.
2. The right to request a **Conference** to discuss the suspension.
3. The right to **Alternative Instruction** during the suspension.

NOTICE

- Notice is a written letter explaining the suspension.
- Notice must be in writing and must be received by the parent within 24 hours of the principal's decision to propose suspension.
- Notice must be provided in the parent's dominant language.
- Notice must be received prior to commencement of the suspension unless the student's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process.
- Notice must include:
 - A clear description of the incident that led to the suspension and the date it occurred.
 - An explanation of your right to request an informal conference with the principal and your right to question "complaining witnesses".

The Right To Request a Conference

- The conference gives you the opportunity to discuss the incident with the principal and tell your child's side of the story.
- The parent must request the conference – it is not automatic.
- You may bring an attorney or an advocate, but you should give the school advance notice of this.
- You have the right to question witnesses, but you should give advance notice that you wish to do so.
- You may ask to view – or have the principal view- surveillance tapes of the area where the incident occurred, but you should give advance notice of this.

Long Term Suspensions

- A superintendent can order a suspension of six school days or more.
- Before a student can be suspended for six days or more, the parent must be given written NOTICE and a HEARING.

NOTICE

- You must receive written notice of the suspension. This Notice must:
 - be received more than one day before the hearing;
 - be in writing – a phone call is not enough;
 - be in the parent's dominant language;
 - contain a clear description of the incident that led to the suspension with the date it occurred;
 - contain information about the formal hearing date, time and location and your right to participate in the hearing;
 - contain information about your right to be represented by an attorney, or other trusted individual at the hearing;
 - contain an explanation of your right to question complaining witnesses at the hearing;
 - contain an explanation of your right to present witnesses at the hearing.

The Right to a Fair Hearing

- The hearing is automatic and will occur even if you do not attend it. The hearing may be adjourned (postponed) at the parent's request. If you postpone the hearing, the student will remain out of school until the hearing is held.
- The hearing happens in two parts (three if your child is a student with a disability). The fact-finding part of the hearing is where it is determined whether the student committed the alleged offense. The dispositional part of the hearing is where the punishment is determined.

Your Rights at the Hearing

- Your right to Counsel – you should advise the school of your intention to bring an attorney.
- Your right to present evidence and question witnesses:
 - You and/or your child may testify to tell your side of the story.
 - You may question witnesses – people you trust that saw the event and agree with your version of the facts. Make sure that the witness is available to attend the hearing. If you wish to ask another student to testify, you must get the permission of the student's parent. You may also cross examine witnesses who do not agree with you.
 - You may request a subpoena to compel a witness to testify.

Your Right to Remain Silent

- A student has the right to remain silent and cannot be forced to answer questions.
- If there are criminal charges, you should consult with a criminal attorney who may advise your child not to testify.

Hearing Waivers

- You may have the right to enter a “no contest” plea at the fact-finding part of the hearing. When you plead no contest, you accept the school’s charges and waive or give up the right to challenge the charges. This eliminates the need for a fact-finding hearing.
- If you plead no contest, you may continue onto the dispositional phase of the hearing, or you may waive that hearing and agree to a suspension length.
- Either way, you must receive a letter confirming the no contest plea and the length of the suspension.

Dispositional Phase

- In the dispositional phase, the Hearing Officer decides what the punishment will be and how long your child will be suspended.
- Depending on the charges, your child's grade and past behavioral history, the school may recommend immediate reinstatement (your child returning to school immediately) or continued suspension.
- The decision will be based on your child's school records, including grades, progress reports, and information about your child's disciplinary history (e.g., prior suspensions or incidents), if any.
- You have the right to review all of these records before the hearing.
- You may submit any materials to the Hearing Officer that you think would be helpful to show your child in a positive light, including letters from people who know your child.
- The Superintendent must render a written decision within a few days stating the date your child may return to school.
- You may ask the Hearing Officer to recommend non-disciplinary interventions for your child, such as in-school counseling, peer-mediation, or restorative justice.

Alternative Education

- Students who are 16 or younger (17 in some districts) have the right to continue their schoolwork while suspended. Each District provides alternative education in its own way. The parent will have to arrange with the District for this instruction.
- If your child cannot access this instruction without a bus, you should request that transportation be provided.
- The work done while on suspension must be substantially equivalent to the work done while in school. If your child takes a lab science, the school must provide access to whatever is necessary and appropriate to complete the lab portion of the course.
- If your child is older than 16 or 17 (compulsory school age), the school district does not have to provide alternative education. However, districts will often provide instruction if asked.

Appealing the Decision

- You have the right to appeal the Decision of the Superintendent if you believe that your rights were violated.
- The appeal process is governed by the rules of the school board, which sets timelines and procedures.
- To appeal the decision, you will need to request the hearing transcript.

Students with Disabilities

- Students with disabilities who attend public school, and those who are suspected of having a disability, are subject to a school district's regular discipline procedures with additional protections.
- These students have the right to a manifestation determination hearing after the fact-finding phase and before the dispositional phase of the hearing.

Manifestation Determination Review (MDR)

- The MDR is a review of the relationship between a student's disability and the behavior subject to the disciplinary action; it's required when a discipline sanction could result in a change of placement.
- The review must be conducted by the district, the parents, and relevant members of the IEP team.
- The parent must receive written notice of the MDR.
- The MDR determines two questions:
 - **1. Was the behavior in question caused by or did it have a direct and substantial relationship to the student's disability?**
 - **2. Was the behavior in question the direct result of the school district's failure to implement the student's IEP?**

Results of MDR

- If the MDR determines that there was a positive nexus, meaning that the student's behavior was connected to the disability or was caused by the District's failure to implement the IEP, then the student must return to school. In addition, the CSE must conduct a functional behavioral assessment (FBA) and implement a behavior intervention plan (BIP).
- If the District failed to implement the IEP, the District must take immediate steps to remedy the deficiencies that caused this failure.
- If there is no nexus found, the District may proceed to the dispositional phase and impose a long term suspension.

Student Removal to IAES with Positive Nexus

In certain circumstances, even if there is a positive nexus, the student may not be permitted to return to school for up to 45 days. This would include situations in which the violation of the code of conduct involved:

- infliction of serious bodily injury;
- possession of a weapon;
- possession, use or sale of drugs

Appeal

The MDR decision may be appealed through the impartial hearing process.